



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON, D.C. 20370-5100

SMC  
Docket No: 04131-00  
20 October 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: SSGT [REDACTED] USMC [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 13Mar00 w/attachments  
(2) HQMC PERB memo dtd 9Jun00  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that the applicable naval record be corrected by removing therefrom the fitness reports for 16 March to 31 October 1995, 1 November to 31 December 1995 and 1 January to 8 March 1996. Copies of these reports are at Tabs A, B and C, respectively. As indicated at paragraph 3.f below, the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has modified the reports for 1 November to 31 December 1995 and 1 January to 8 March 1996 by removing parts of section C, the reporting senior's narrative comments.
2. The Board, consisting of Mses. Hare and Schnittman and Mr. Ensley, reviewed Petitioner's allegations of error and injustice on 19 October 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:
  - a. Before applying to this Board, Petitioner exhausted all administrative remedies which were available under existing law and regulations within the Department of the Navy.
  - b. Petitioner contends that all three reports, submitted by the same reporting senior and reviewed by the same reviewing officer, marked him down unjustly because the reporting senior incorrectly believed he had refused or was hesitant to deploy. Petitioner says he merely requested a change of duty station to satisfy his overseas control date which prevented him from deploying, and that the reporting senior "must have interpreted this action as a lack

of loyalty instead of as [his] right to choose [his] own career path." He also contends all three reports reflect inconsistency between those of the marks which were not the highest possible and those of the comments which were favorable. He further contends the reporting senior "did not like or respect" his placement on limited duty for six months, beginning 23 August 1995, for ankle sprains, and that this contributed to the reporting senior's bias against him. Finally, he asserts that the contested reports are "significantly less competitive" than those before and after, evidencing bias against him. He provides a supporting letter of 10 March 2000 from a captain who compliments Petitioner's performance during the six months preceding the letter, but says they did not work together during the pertinent period.

c. At enclosure (1) to Petitioner's application is a version of the fitness report for 16 March to 31 October 1995 which is not in his official record, but which he asserts to have been submitted to and returned by HQMC. In this version, section C, which is generally favorable, includes the following: "however SNM's loyalty has come into question due to his refusal to deploy with this battalion." It also mentions that Petitioner did not take the physical fitness test (PFT) because of a six-month limited duty status caused by chronic ankle pain, a problem unresolved. In section B, items 13 and 14, the observed marks assigned are "OS" (outstanding/highest possible), except for marks of "EX" (excellent/second highest) in items 13a ("regular duties"), 13e ("handling enlisted personnel"), 14c ("military presence"), 14d ("attention to duty"), 14f ("initiative"), 14g ("judgment"), 14j ("leadership"), 14m ("economy of management") and 14n ("growth potential"); and "AA" (above average/third highest) in items 14i ("force") and 14k ("loyalty"). In section B, item 15 ("general value to the service"), Petitioner is marked "EX" (third highest), with three sergeants marked above him as "OS" (highest), and none with or below him. Petitioner says HQMC returned this version of the report to the reporting senior explaining that the comment about his loyalty and alleged refusal to deploy had to be removed, or the report had to be processed as an adverse appraisal. The reviewing officer indicates insufficient opportunity to observe Petitioner, and therefore no comment. The report of record for this period (Tab A) is identical to the version at enclosure (1) to Petitioner's application, except it does not include the comment concerning loyalty and refusal to deploy. The report of record had no adverse marks or comments, so it was not referred to Petitioner for rebuttal.

d. In the second contested report, for 1 November to 31 December 1995 (Tab B), section C, which is generally favorable, includes the comments "SNM's loyalty has come into question, however due to his refusal to deploy with the battalion" and "Has yet to attend SNCO Career Course." As in the previous report, this report also mentions that Petitioner did not take the PFT because of a six-month limited duty status caused by chronic ankle pain, a problem unresolved. The observed marks in section B, items 13 and 14 are "OS," except for "EX" marks in items 13a, 13e, 14c, 14f, 14g, 14j, and 14n; and again "AA" in items 14i ("force") and 14k ("loyalty"). In item 15, Petitioner is marked "EX" to "OS" (second highest), with two staff sergeants marked above him as "OS," and none with or below him. The reviewing officer indicates only limited opportunity to observe Petitioner, but general concurrence with the marks the reporting senior assigned Petitioner in item 15. Despite the derogatory language in section C, this report was not referred to Petitioner for rebuttal.

e. The final contested report, for 1 January to 8 March 1996 (Tab C), is a transfer report. Section C, which is generally favorable, documents that Petitioner did go on deployment, but it also includes "However, transfer of SNM was brought about by his hesitancy to deploy with the battalion" and "Has yet to attend SNCO Career Course." As in the previous two reports, this report also mentions that Petitioner did not take the PFT because of a six-month limited duty status caused by chronic ankle pain, a problem unresolved. The observed marks in section B, items 13 and 14 are "OS," except for marks of "EX" in items 13e, 14c, 14g, 14i ("force"), 14j and 14k ("loyalty"). In item 15, Petitioner is again marked "EX" to "OS," with two staff sergeants marked above him as "OS" and none with or below him. The reviewing officer indicates sufficient opportunity to observe Petitioner and concurrence with the marks the reporting senior assigned Petitioner in item 15. Despite the derogatory language in section C, this report, as the one before it, was not referred to Petitioner for rebuttal.

f. Enclosure (2) is the report of the HQMC PERB in Petitioner's case. The report reflects the PERB decision to deny Petitioner's request for complete removal of the contested reports. However, PERB states that the section C narratives of the reports for 1 November to 31 December 1995 and 1 January to 8 March 1996 contain comments which are "adverse and inappropriate" and, therefore, warrant removal. From the report for 1 November to 31 December 1995, they directed removing "SNM [subject named Marine]'s loyalty has come into question, however due to his refusal to deploy with the battalion" and "Has yet to attend SNCO [staff noncommissioned officer] Career Course." From the report for 1 January to 8 March 1996, they directed removing "However, transfer of SNM was brought about by his hesitancy to deploy with the battalion" and "Has yet to attend SNCO Career Course." PERB finds these comments should not invalidate otherwise acceptable performance evaluations. They state "Notwithstanding the petitioner's statement and the advocacy letter [from the captain] (who has only observed the petitioner since September 1999), there is no documentary evidence whatsoever to suggest that any of the reports are less than honest and objective evaluations." In conclusion, PERB finds the limited corrective actions they directed are sufficient to rectify the errors in the reports at issue.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosure (2), the Board finds all three contested reports should be removed.

Although the report of record for 16 March to 31 October 1995 does not include the adverse narrative in the version of the report at enclosure (1) to Petitioner's application, the Board is convinced that the omitted language about his alleged refusal to deploy was the basis for the lower marks assigned in "loyalty" and "force." They find the mark in "general value to the service" and peer ranking may have been tainted as well. Noting that the last contested report shows Petitioner did deploy, they accept his representations to the effect that he did not, in fact, refuse to deploy; therefore, they conclude he was unjustly marked down.

Concerning the reports for 1 November to 31 December 1995 and 1 January to 8 March 1996, the Board finds the lower marks in "loyalty" and "force" were based on the adverse comments about deployment which have been removed by PERB, and that the marks in "general value to the service" and peer rankings may have been tainted as well.

Regarding all three reports, the Board finds that since so much of each report is of questionable validity, the reports should be removed completely rather than modified.

In view of the above, the Board recommends the following corrective action:

**RECOMMENDATION:**

a. That Petitioner's naval record be corrected by removing the following fitness reports and related material:

Date of Report	Reporting Senior	Period of Report From To
6Dec95	1stLt A [REDACTED] MC	16Mar95 31Oct95
24Jan96	"	1Nov95 31Dec95
18Mar96	"	1Jan96 8Mar96

b. That there be inserted in Petitioner's record ONE memorandum to replace the removed reports, containing appropriate identifying data; that such memorandum state that the portion of his fitness report record for 16 March 1995 to 8 March 1996 has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the removed material.


c. That the magnetic tape maintained by Headquarters Marine Corps be corrected accordingly.

d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

e. That any material directed to be removed from Petitioner's naval record be returned to this Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

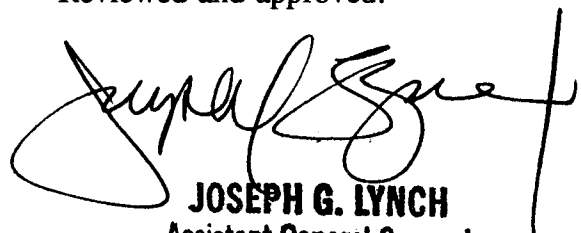
  
JONATHAN S. RUSKIN  
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

  
W. DEAN PFEIFFER

Reviewed and approved:

NOV 29 2000

  
JOSEPH G. LYNCH  
Assistant General Counsel  
(Manpower And Reserve Affairs)



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

4131-00  
IN REPLY REFER TO:  
1610  
MMER/PERB  
8 JUN 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF  
SERGEANT [REDACTED], [REDACTED] USMC

Ref: (a) SS [REDACTED] DD Form 149 of 13 Mar 00  
(b) MCO P1610.7D

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 25 May 2000 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 950316 to 951031 (GC)
- b. Report B - 951101 to 951231 (AN)
- c. Report C - 960101 to 960308 (TR)

Reference (b) is the performance evaluation directive governing the submission of all three reports.

2. The petitioner argues that markings in Section B and comments in Section C of all three reports are "inaccurate." He also charges that Reports B and C contain "libelous" comments. It is the petitioner's position that comments concerning his loyalty and hesitancy to deploy are blatantly untrue and convey a false impression of his performance. He further believes that his limited duty status contributed to the Reporting Senior's bias against him. To support his appeal, the petitioner furnishes his own detailed statement and a letter from Captain [REDACTED].

3. In its proceedings, the PERB concluded that:

a. Report A is both administratively correct and procedurally complete as written and filed. Succinctly stated, the report contains no comments/marks that are adverse in nature; nor does it suggest that the Reporting Senior was not writing the report within the full spirit and intent of reference (b). Absent anything to the contrary, Report A is viewed as a valid appraisal of performance.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF  
SERGEANT [REDACTED] USMC

b. Reports B and C both contain comments which are adverse and inappropriate. The Board does not, however, find these comments to invalidate otherwise acceptable performance evaluations and has directed removal of the verbiage identified below:

(1) Report B: "SNM's loyalty has come into question, however due to his refusal to deploy with the battalion." and "Has yet to attend SNCO Career Course."

(2) Report C: "However, transfer of SNM was brought about by his hesitancy to deploy with the battalion." and "Has yet to attend SNCO Career Course."

c. Notwithstanding the petitioner's statement and the advocacy letter from Captain [REDACTED] who has only observed the petitioner since September 1999), there is no documentary evidence whatsoever to suggest that any of the reports are less than honest and objective evaluations.

4. The Board's opinion, based on deliberation and secret ballot vote, is that Report A and the modified versions of Reports B and C should remain a part of Staff Sergeant [REDACTED] official military record. The limited corrective actions identified in subparagraphs 3b(1) and 3b(2) are considered sufficient to rectify the errors.

5. The case is forwarded for final action.

[REDACTED]  
Chairperson, Performance  
Evaluation Review Board  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps